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| In the Matter of: | : | |
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| **Jack McAdoo**, | : | HUDBCA No. 03-A-NY-DD021 |
| | : | Claim No. 72-0101535 |
| Petitioner | : | |
| | : | |

Jack McAdoo
31790 US HWY 19 N #149
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Pro se

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For the Secretary

## DECISION AND ORDER ON RECONSIDERATION

Petitioner was notified by a Notice of Intent, pursuant to 31 U.S.C. § 3720A, that the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek offset by the Internal Revenue Service ("IRS") or the U.S. Department of the Treasury of any Federal payment due to Petitioner against a claimed past-due, legally enforceable debt of Petitioner to HUD. Petitioner filed a timely request to present evidence that the debt was not past due or not legally enforceable. As a result of that request, referral of the debt for offset by the IRS or the U.S. Department of the Treasury was temporarily stayed.

On December 19, 2003, a motion to dismiss was filed on behalf of the Secretary stating that the Secretary would not refer the debt to the Internal Revenue Service or the U.S. Department of the Treasury pursuant to 24 C.F.R. § 17.154 because administrative offset of any Federal payment due Petitioner to satisfy this debt is barred by the applicable statute of limitations. On December 24, 2003, the Board issued a Decision and Order which granted the Secretary's motion to dismiss, ordered the Secretary not to pursue collection of this debt through administrative offset, and dismissed this matter with prejudice.

On January 9, 2004, the Secretary filed a Motion for Reconsideration and Withdrawal of Motion to Dismiss ("Secy. Motion") asserting therein that "[f]urther investigation into the facts underlying the basis of the Secretary's Motion to Dismiss uncovered an error in the calculation of the date on which the statute of limitations began to toll." On February 11, 2004, the Board granted the Secretary's motion that the Board reconsider the Decision and Order issued in this matter.

## Background

On August 31, 1988, Petitioner assumed a mortgage loan ("note") originated by the mortgagee-lender, Reliance Equities, Inc. The original amount of the note was $50,100.00 and the proceeds of the note were used for the purchase of property located at 4899 S. Dudley St., Littleton, CO 80123. The note was secured by a Deed of Trust dated July 15, 1983. The note was subsequently assigned to Great Financial Bank, FSB, f/k/a/ Lincoln Service Mortgage Corporation, f/k/a/ Lincoln Service Corporation ("Lincoln"). (Secretary's Statement That Petitioner's Debt Is Past Due And Legally Enforceable, hereinafter "Secy. Stat.," ¶ 3; Secy. Stat., Exhs. A and D, Declaration of Glen Goodman, hereinafter "Goodman Decl.," ¶ 4). It is uncontested that:

> Default on the loan occurred on January 1, 1989. The property was foreclosed on March 31, 1989. As the value of the property was less than the total unpaid principal, interest, and legal costs, a deficiency balance remained. Lincoln obtained a deficiency judgment for [$51,971.91] plus accrued interest dated October 16, 1995 and assigned the judgment to HUD on November 27, 1995. (Goodman Decl., ¶ 4).

"[T]he note bearing the deficiency was assigned to the Secretary on July 5, 1994 and on November 28, 1994, the note was assigned back to the mortgagee with subrogation rights. The deficiency judgment was thereafter obtained by the mortgagee on October 16, 1995." (Secretary's Response to Order, ("Secy. Resp. to Order") dated January 19, 2005). A notice of HUD's intent to seek collection of this debt by means of administrative offset was sent to Petitioner on May 1, 2000. (Goodman Decl., ¶ 6). Petitioner, currently a resident of Florida, requested that his appeal of the government's offsets be heard and decided because he had "only recently learned of the said debt" and "was never aware or understood that [he] could appeal earlier." (Pet. Ltr. dated August 14, 2003). The Board granted Petitioner's request and docketed this matter on August 18, 2003.

The Secretary filed a Statement on October 31, 2003 alleging that Petitioner was indebted to HUD on the claim in the following amounts: $29,983.11 as the unpaid principal balance as of July 30, 2003; $216.00 as the unpaid non-interest bearing principal balance, as of July 30, 2003; $41,644.78 as the unpaid interest on the principal

balance at 9.450% per annum through July 30, 2003; and interest on said principal balance from August 1, 2003 at 9.450% per annum until paid. (Secy. Stat., ¶ 5).

## Discussion

Petitioner contests the Secretary's motion for reconsideration essentially on three distinct grounds: (1) that HUD acted in bad faith in the prosecution of this case; (2) that the deficiency judgment obtained against him was unlawful due to lack of legally sufficient notice; and (3) that the date for the commencement of the ten-year period in which collection of this debt by administrative offset is permissible is January 1, 1989, the date on which Petitioner defaulted on the note. As a result, Petitioner asserts that the alleged debt is not legally enforceable against him and seeks the return of all sums improperly withheld by means of administrative offset. (Petitioner's Answer to Request for Reconsideration ("Pet. Ans."), dated February 2, 2004).

Petitioner's pivotal argument is that certain offsets of payments due Petitioner initiated after HUD's notice of intent to offset dated May 1, 2000 were barred by provisions of the Deficit Reduction Act of 1984, 31 U.S.C. § 3720A (the "Act") because the time period established by law for the collection of this debt by means of administrative offset had expired. (Pet. Ltr. dated October 14, 2003). The Act provides that no claim "that has been outstanding for more than 10 years" may be collected by means of administrative offset. (31 U.S.C. § 3716 (e)(1)). Petitioner cites Sharon Dell, HUDBCA No. 90-493-L436 (1990), for the proposition that the "ten-year statute of limitations begins to run from the date of default." (Pet. Ans., ¶ 14). It is uncontested that the date of default on the note is January 1, 1989. (Goodman Decl., ¶ 4).

It is undisputed that the delinquent note was assigned by the Secretary back to Great Financial Bank on November 28, 1994. On October 16, 1995, an Order of Judgment was entered by the District Court for the City and County of Denver for the State of Colorado, which found in favor of Plaintiff, Great Financial Bank, fka Lincoln Service Mortgage Corp., fka Lincoln Service Corporation, and against Defendant, Jack J. McAdoo, in the amount of $51,971.91, with interest at $9.45 per diem. (Secy. Motion, Composite Exh. 2; Pet. Ltr. dated October 14, 2003, Composite Exhibit A, documents filed in Lincoln Service Mortgage Corporation F/K/A Lincoln Service Corporation v. Jack J. McAdoo, District Court, City and County of Denver, State of Colorado, Case No. 94-CV6308, Div. 14). On November 27, 1995, Great Financial Bank assigned all of its right, title and interest in the deficiency judgment to the Secretary. (Secy. Motion, Composite Exh. 2).

The Secretary argues that the ten-year statutory limitation for administrative offset does not presently bar collection of the debt because the Secretary is "not attempting to collect on the [defaulted] note [which became delinquent on January 1, 1989], but rather is attempting to collect on the deficiency judgment [dated October 16, 1995] that was assigned to the Secretary." (Secy. Motion). Thus, the Secretary posits, the ten-year limitation in administrative offset actions involving judgment debts begins to run from the time the judgment was obtained, not from the date of default.

The Secretary relies on the holding in Eric Gunnerson, HUDBCA No. 01-C-NY-BB128 (2002) for the proposition that the "statute of limitations began to toll on this debt on October 16, 1995, the date the judgment was entered against Petitioner." (Secy. Motion, at ¶ 3). In Gunnerson, this Board held that "[i]f a loan has been in default for more than ten years, it may not be enforced by administrative offset except when there is a judgment on the debt providing for a longer enforcement period." Gunnerson, at 6, citing 26 C.F.R. § 301.6402-6 (b) (2) and Sarah Gass, HUDBCA No. 93-C-NY-R945 (1993).

It should be noted that 26 C.F.R. § 301.6402-6 (b) (2) was erroneously cited in Gunnerson. That regulation relates to agency notification to the Internal Revenue Service and procedural requirements to establish an agency's eligibility to participate in the tax refund offset program, and is unrelated to the issue of the applicability of the ten-year statute of limitations for administrative offsets. The relevant regulation of the U. S. Department of the Treasury, which should have been cited in Gunnerson, is 26 C.F.R. § 301.6402-6 (c). That regulation states in pertinent part:

> (c) [A] Federal agency may refer a past-due, legally enforceable debt to the [Internal Revenue] Service for offset if--
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> (1) Except in the case of a judgment debt or any debts specifically exempt from this requirement (for example, debts referred by the Department of Education that were pending on or after April 9, 1991, and referred to the [Internal Revenue] Service for offset before November 15, 1992), the debt is referred for offset within ten years after the agency's right of action accrues. [emphasis added].

However, the Federal statute which authorizes the offset program, 31 U.S.C. § 3716, does not contain any exception to the ten-year limitations period. The pertinent provision simply states:

> (e) This section does not apply
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> (1) to a claim under this subchapter that has been outstanding for more than 10 years; or
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> (2) when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved.

In a case dealing with the recovery of an outstanding Federal debt arising from a defaulted student loan, the Federal court held that:

> Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. § 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment. [emphasis in original].

Guillermety v. Secretary of Education of U.S., 241 F.Supp.2d 727, 736 (E.D. Mich. 2002).

However, there was no judgment obtained or at issue in the factual circumstances in the Guillermety case; nor did the court in Guillermety define or elaborate further on this single reference to a "limitation" relating to "debts reduced to a judgment."

In contrast to the Board's holding in Gunnerson and Gass, another administrative judge of this Board opined in Martha Nesser, HUDBCA No. 02-C-NY-CC055 (2003), that "although a judgment may be presently enforceable against a debtor and may create a lien in favor of the United States for a specific number of years, the pertinent Federal statute applicable to collection of debts by offset provides that a claim that has been outstanding for more than ten years may not be collected by means of administrative offset." Id., at 3, citing 31 U.S.C. §3716 (c) (1); Billy W. Page, HUDBCA No. 86-1344-F350 (1986); Gerrard v. U.S., 656 F. Supp. 570 (N.D. Cal. 1987); Grider v. Cavazos, 911 F.2d 1158 (5th Cir. 1990); and 26 C.F.R. §301.6402-6 (b) (2). In Nesser, the Board found no basis for extending the ten-year period for collection by means of administrative offset due to the existence of a judgment.

Unlike the subject case and the Gunnerson case, in Nesser, as in United States, et al. v. York, et al., 909 F.Supp. 4 (D.D.C. 1995), it was the United States, not a private mortgagee, which obtained a judgment against the debtor. Clearly, in Nesser and in York, the government's knowledge of a default and its right to pursue collection by means of administrative offset commenced well before the judgment was obtained. Consequently, the date of a judgment subsequently obtained by the United States would not be material in the computation of the authorized ten-year period for administrative offset.

HUD's administrative offset procedures which govern the Secretary's collection of debts authorized by 31 U.S.C. § 3716 provide in relevant part:

> (a) The Secretary may not initiate offset of Federal payments due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt

> first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.
> (b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (See, for example, 28 U.S.C. § 2415.). [emphasis in original].

24 C.F.R. § 17.160.

HUD's procedural rules relating to administrative offsets contain no language which alters the moment when "the Secretary's right to collect the debt first accrued," even when HUD, in addition to being the assignee of a delinquent HUD-insured loan, is also the assignee of a judgment against a debtor. 24 C.F.R. §§ 17.150-17.170.

The circumstances and conclusions set forth in York also provide useful guidance. In York, a debtor against whom the Government National Mortgage Association ("Ginnie Mae") had obtained judgment, filed a motion for a stay of execution and to quash the government's attachment of the judgment debtor's insurance proceeds from the Federal Housing Administration. The defendant in York argued, inter alia, that the offset effected by the government was "unauthorized and invalid." Id. at 7. Specifically, the defendant argued that "the Federal Debt Collection Act of 1982 … , 31 U.S.C. §§ 3701-20, which governs administrative offset and … HUD's regulations implementing that statute do not authorize the use of administrative offset when, as here, the United States has a judgment against the debtor." Id. The government agreed in York with defendant's position on this issue, and conceded that "HUD's offset regulations do not apply to the collection of judgments." Id. The court noted that:

> HUD's administrative offset procedures, which govern that agency's collection of debts under 31 U.S.C. § 3716, provide, in relevant part: The standards set forth in [these procedures] are the Department's procedures for the collection of money owed to the government by means of administrative offset. These procedures apply to the collection of debts as authorized by common law, by 31 U.S.C. § 3716, or under other statutory authority. These procedures will not be used … *when the United States has a judgment against the debtor*. 24 C.F.R. 17.100 (a). (emphasis added).

York at 7, FN 1 (emphasis and parentheticals in original York text).

The limitation period set forth in 31 U.S.C.A. § 3716(e)(1) governs claims under this subchapter which are claims of the United States. A "claim" is defined, for the purposes of this proceeding, as "any amount of funds or property that has been

determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency." 31 U.S.C.A. § 3701(b)(1). The Treasury regulations applicable to the offset of Federal benefit payments define "claim" in an identical manner. 31 C.F.R. § 285.4(b) states that a "claim" means "an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. 31 C.F.R. § 285.4(b). Likewise, 31 C.F.R. § 5.30, which applies to the collection of debts owed to the United States, defines a "claim" to include amounts, like those in this case, owed to the United States for "funds owed on account of loans made, insured, or guaranteed by the Government . . . ."

"It is a well settled canon of statutory construction that when interpreting statutes, '[t]he language of the statute is the starting point if the plain meaning of that language is clear.'" United States v. Boucha, 236 F.3 768, 774 (6th Cir. 2001)(quoting United States v. Choice, 201 F.3d 837, 840 (6th Cir .2000). The clear and unambiguous language in 31 U.S.C.A. § 3716 speaks to the collection of "claims" of the United States Government. 31 U.S.C.A. § 3716(a) states, in pertinent part: "After trying to collect a claim from a person under § 3716(a) of this title, the head of the executive . . . agency may collect the claim by administrative offset." Id.

31 U.S.C.A. § 3716(e)(1) establishes a definite time period for the collection of claims by administrative offset. The Act does not state that the ten-year period allowed for the collection of a debt by administrative offset commences with the date of a deficiency judgment. If the Board were to accept the Government's position given the unusual facts in this case, the Board would be compelled: (1) to recognize the existence of a valid Government claim when the debt was first assigned to the Secretary on July 5, 1994; (2) to find that the Secretary's claim was somehow terminated and the right to collect the debt by offset was extinguished when the Secretary assigned the defaulted note back to the mortgagee with subrogation rights on November 28, 1994; and (3) to accept the Government's conviction that this claim was resurrected or began anew on either the date of the judgment (October 16, 1995), or, in the alternative, the date on which the note and judgment were assigned to the Secretary (November 27, 1995). The Board is disinclined to accept this theory as a reasonable construct of this claim.

Like the Board, the Secretary has also taken different positions on this issue. For example, in Dell, the Secretary strongly argued that the pivotal date for the commencement of the ten-year period for the collection of debts by means of administrative offset is the date that the Secretary was assigned the debt from the lender. The Board noted in Dell that:

> The Secretary states in his Motion for Reconsideration that the date of default of the subject loan was June 28, 1979, although it seems obvious that the Petitioner defaulted on the note in question prior to the entry of the judgment by the Common Pleas Court of Huntingdon County, Pennsylvania on June 28, 1979. ([Exh. B,] Attached to

> letter dated Nov. 10, 1989, from counsel [of] Petitioner). Nonetheless, the Secretary asserts that this claim has not been outstanding more than ten years because the period allowed for the collection of a debt through administrative offset begins to run from the date the Secretary received assignment of the debt, in this case February 4, 1980. The Secretary has cited Federal Deposit Ins. Cor[p.] v. Hinkson, 848 F.2d 432 (3d Cir. 1988), in support of this assertion.
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> The Secretary submits that the holding in Hinkson supports the proposition that the applicable date of the commencement of the period for the collection of a debt by administrative offset is the date the claim is assigned to HUD, rather than the date of default. The Secretary notes that 28 U.S.C. § 2415, the pertinent statute in Hinkson, "specifically refers to 31 U.S.C. § 3716(c)(1), the applicable section in the instant case . . . .Thus, [t]he Secretary believes that given the existence of a direct reference to 31 U.S.C. § 3716 within 28 U.S.C. § 2415, the two statutes may be read together.

Secy. Motion for Reconsideration in Dell.

Upon reflection, the Board views the position advocated by the Secretary in Dell as the most reasonable interpretation of the pertinent law on this issue, and reflective of the holdings below of the Federal district and appellate courts where the issue of a judgment debt has been considered in light of an offset action. This interpretation has a better established legal foundation than arguments and Board holdings to the contrary which view either the date of default of a HUD-insured loan or the date of a judgment as determinative of the commencement of the government's right to pursue administrative offset. Both of these dates are specious dates to employ in such a calculation because the Department, upon default of a HUD-insured loan or upon entry of a judgment in a state court, is generally not concurrently possessed of "facts material to the . . . right to collect the debt [because these facts] were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debt." 31 U.S.C. § 3716(a).

In FDIC v. Belli, 981 F.2d 838, 840 (5th Cir. 1993), the appellate court determined that "a cause of action accrues when it comes into existence." The court recognized in the FDIC v.Belli case that a number of courts have determined that an "accrued" cause of action in regard to 28 U.S.C.A. § 2415(a) means that the period for offsets does not begin to run until there is a right to sue on the underlying obligation. Other Federal courts have determined that a limitation period "does not begin to run until the government has actually accelerated the underlying obligation because of default or the

note reaches maturity without being paid, at which point it acquires a right to sue." Seward v. U.S. Department of Agriculture, 229 F. Supp. 2d 557, 569 (S.D. Miss. 2002).

In several cases involving defaulted student loans, courts have held that the United States, as guarantor of the debt, acquired the right to recover from the recipient of the student loan on the date when the government paid off the indebtedness, not on the date when the loan went into default. United States v. Kendrick, 554 F. Supp. 121 (D.C. Ark. 1982); United States v. Frisk, 530 F. Supp. 238 (D.C. Cal. 1980); United States v. Whitesell, 563 F. Supp. 1355 (D.C.S.D. 1983).

In Roberts v. Bennett, 709 F. Supp. 222 (N.D. Ga.1989), the district court held that a limitations period precluded only the particular remedy barred by the statute—in that instance, filing a lawsuit—but did not bar the underlying claim nor other possible remedies such as enforcement through counterclaims, negative credit reports, foreclosure on collateral and administrative offset. Id. at 224-25. The court also determined that "the debt cannot become delinquent until it is in the hands of the agency requesting the offset." Id. Although the six-year statute precluded the filing of an action to obtain a judgment on the debt, the court in Roberts reasoned that an offset was authorized and appropriate under 31 U.S.C.A. § 3720A, as ten years had not elapsed since the government first became eligible to collect the debt by that method. See also Thomas v. Bennett, 856 F.2d 1165 (8th Cir.1988) (affirming the district court's dismissal of taxpayer's suit for declaratory and injunctive relief and holding that IRS tax refund offset, having a ten year statute of limitations, was proper despite the fact that the six year statute under 28 U.S.C.A. § 2415(a) had run since the student loan was assigned to the Government for collection); Gerrard v. United States Office of Education, 656 F.Supp. 570 (N.D. Cal. 1987) (holding that a student loan debt was properly offset under 31 U.S.C.A. § 3720A where the offset occurred more than six but less than ten years after the loan was assigned to the government).

In Hurst v. United States Department of Education, 695 F.Supp. 1137, at 1139 (D. Kan. 1988), the district court held that the limitation period commenced only when, upon assignment, the government received the right to collect the debt. Cf. United States v. Hunter, 700 F.Supp. 26 (M.D. Fla. 1988) (in a case involving collection by lawsuit as opposed to offset, the district court held that the statute of limitations did not begin to run against the United States until the loan was assigned to it, irrespective of the fact that the state statute of limitations had long since expired). In United States v. Dos Cabezas Corp., 995 F.2d 1486 (9th Cir. 1993), the court held that the six-year statute of limitations, which applied to a government action for money damages founded on a contract, also applied to a government action to recover a deficiency judgment following foreclosure on a deed of trust. The court reasoned that "[a] deficiency following foreclosure is neither meaningful nor measurable without reference to the underlying debt. It is that obligation, arising from contract, that is being enforced when a deficiency judgment is obtained." Id. at 1490. The same reasoning is consistent with validating the ten-year statute of limitations for administrative offsets when a deficiency judgment has been obtained. Under the court's reasoning in Dos Cabezas, a judgment, per se, would have no meaning without reference to the underlying debt that has gone into default. In any event, under

the guidance provided by several court decisions on this issue, the Board cannot conclude that the commencement of the government's right to offset, once properly vested in a Federal agency following an assignment of a claim, can be shifted to an earlier or a later date to reflect that a deficiency judgment was obtained.

In the instant case, "the note bearing the deficiency was assigned to the Secretary on July 5, 1994[,] and on November 28, 1994 the Note was assigned back to the mortgagee with subrogation rights. The deficiency judgment was thereafter obtained by the mortgagee on October 16, 1995." (Secy. Resp. to Order). Since the Secretary's right to pursue administrative offset accrued on July 5, 1994, which was over a year before both the judgment and the defaulted note were assigned to HUD, the ten-year time period within which this debt can be collected by means of administrative offset has now expired. See Federal Deposit Ins. Corp. v. Greenwood, 701 F.Supp. 691 (C.D. Ill. 1988). It is well established that "[s]tate statutes of limitations are not controlling in these administrative offset actions because a prior judgment in a state court is not a prerequisite." Jim and Brenda Plantt, HUDBCA No. 95-A-SE-S590, at 2 (1995). Similarly, the Board does not view a judgment in a state court as a "prerequisite" or a legitimate basis for altering the date when a Federal claim becomes outstanding under Federal law.

The Secretary should note that the vast majority of administrative offset cases which come before this Board and which involve a judgment debtor are cases where the judgment has been obtained by the lender significantly earlier than the date of the assignment to HUD of the deficiency judgment, the defaulted note, and the lender's insurance claim. Consequently, it would not appear to be in the Secretary's best interest to insist that the Board use the date of a prior judgment as the date for the commencement of the ten-year offset period in all circumstances, even if there did not exist the substantial body of law which militates against the general use of the date of a judgment as pivotal for administrative offset purposes.

## Conclusion

The Board finds the Secretary's arguments in the Motion for Reconsideration of this matter and the Response to Order filed in this case to be unpersuasive. The Board also concludes, upon close review of its prior determinations relating to this issue, that certain of its holdings in Dell, Gunnerson and Gass were in error. The Board now holds that it is not the date of a judgment which is pivotal, but the date of the assignment by the lender of the defaulted note to the Secretary. As noted above, the date that the lender assigns the note to the Secretary establishes a claim with the Secretary and is the date on which the tolling of the ten-year period for administrative offset commences as a matter of law. This is the date on which "the Secretary's right to collect the debt first accrued . . . ." 31 U.S.C. § 3716(a). On July 5, 1994, the Secretary could have lawfully pursued collection of this debt by means of administrative offset. The Secretary, in his election of remedies relating to the means by which this debt should be collected, apparently chose not to pursue collection by means of administrative offset at that time, although he was clearly authorized by statute to do so.

In this unusual case, the Secretary was successful in his effort, after the initial assignment of the debt to HUD, to encourage the lender to obtain a judgment on the defaulted mortgage loan. The Board notes that judgments on real property can be enforced for a period of twenty years in the State of Colorado, the site of all relevant transactions in this matter. Colo. Rev. Stat. Ann. § 13-52-102(2)(a)(West 1989). Certainly, by obtaining a deficiency judgment against Petitioner on the defaulted mortgage loan, the lender obtained another means by which the Secretary , as assignee of the judgment, can pursue collection of this outstanding obligation. Yet that fact has no impact upon the provisions of 31 U.S.C. § 3716 or upon the extensive body of case law which establishes when the Secretary's right to offset commenced. In any event, the Secretary has failed to prove that once he legally obtained the right to collect this debt by means of administrative offset, he was simultaneously empowered to acquire anew the exact authority over sixteen months later. In the absence of such proof, the Board concludes: (1) that the Secretary's right to pursue collection of this debt by means of administrative offset commenced on July 5, 1994; (2) that this "claim . . . has [now] been outstanding for more than ten years," and; (3) that this claim can no longer be pursued by means of administrative offset pursuant to 31 U.S.C. § 3716.

The Board has considered and now rejects Petitioner's second argument, which alleges that the debt is unenforceable because certain acts or omissions by the Secretary or the Department were conducted in bad faith, and finds these allegations to be unsubstantiated and lacking documentary proof. Assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past-due or enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (1996).

Petitioner's third major contention, that the deficiency judgment obtained against him was unlawful due to lack of notice, cannot be considered by this Board and is dismissed for lack of jurisdiction. This administrative forum has no authority to review, reopen, modify, set aside, vacate, or decline to give full faith and credit to a judgment entered by a court of competent jurisdiction. Petitioner's concerns regarding the legal sufficiency of the deficiency judgment must be considered by the court which entered that judgment, or by an appellate or other appropriate court as permitted by law.

## ORDER AND RULING

For the foregoing reasons, the Board finds that the debt which is the subject of this proceeding is currently unenforceable against Petitioner by means of administrative offset. The Order imposing the stay of referral of this matter to the IRS or to the U.S. Department of Treasury for administrative offset is made permanent. The Secretary shall not seek collection of this outstanding obligation by means of administrative offset of any eligible Federal payments due to Petitioner. The Decision and Order issued in matter on December 24, 2003 is AFFIRMED.

The Board's findings and conclusion in Dell, Gunnerson, and Gass as they relate to the pivotal date for the commencement of the ten-year period for the collection of

debts by means of administrative offset are SUPERCEDED by, and REVERSED to the extent that they are inconsistent with, the pertinent findings and legal conclusions set forth in this Decision and Order on Reconsideration.

Petitioner's Motion to Order Release of Money Held by Offset is GRANTED in part and DENIED in part. Petitioner shall be compensated for all Federal payments withheld from Petitioner by HUD or by the U.S. Department of the Treasury to satisfy this outstanding obligation on or after July 5, 2004, the date which the Board has determined to be the expiration of the lawful ten-year period authorized for the collection of this debt by means of administrative offset.

_____
David T. Anderson
Administrative Judge

Concur:

_____
Jerome M. Drummond
Administrative Judge

_____
H. Chuck Kullberg
Administrative Judge

May 13, 2005